

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419

Dkt. No. 1:13-md-2419 (FDS)

THIS DOCUMENT RELATES TO:

All Actions

**JOINT EMERGENCY MOTION OF THE CHAPTER 11 TRUSTEE AND PLAINTIFFS'
STEERING COMMITTEE TO EXTEND THE DEADLINE FOR FILING OF A
MASTER COMPLAINT RELATED TO AFFILIATED DEFENDANTS**

In light of the recently announced potential settlement of claims brought against the Affiliated Defendants,¹ the Chapter 11 Trustee (the “Trustee”) appointed in the Chapter 11 case of New England Compound Pharmacy, Inc. d/b/ New England Compounding Center (“NECC”), and the Plaintiffs’ Steering Committee appointed in this case (the “PSC”), by and through their undersigned counsel, hereby move the Court to extend the deadline set by the Court in the December 13, 2013, status conference for filing a Master Complaint and form of Short Form Complaint containing counts against the Affiliated Defendants. The deadline for filing the Master Complaint and Short Form Complaint is currently January 8, 2014. [Dkt. No. 742 at issue 7] (the “Scheduling Order”). Movants request that the deadline for filing a Master Complaint that names the Affiliated Defendants be extended 60 days, until March 10, 2014.

In support of this Motion, the Movants respectfully state as follows:

¹ Affiliated Defendants include Barry J. Cadden, Gregory Conigliaro, Lisa Conigliaro Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn A. Chin, Alaunus Pharmaceutical, LLC, Ameridose, LLC, Medical Sales Management, Inc., GDC Properties Management, LLC, and Medical Sales Management SW, Inc.

1. Settlement negotiations among the PSC, the Trustee, and the Official Committee, and various defendants, including the Affiliated Defendants, began in April 2013 after the Bankruptcy Court entered an order establishing an agreed-upon protocol for such negotiations. *See* Dkt. No. 99, *In re New England Compounding Pharmacy, Inc.*, Adv. Pro. No. 13-01040-HJB (Apr. 23, 2013).

2. On September 18, 2013, this Court entered Case Management Order No. 7 providing, *inter alia*, that the PSC must file a Master Complaint and form of Short Form Complaint against all entities, including the Affiliated Defendants, on November 5, 2013. [Docket No. 438]. Affiliated Defendants are relieved, until further order of the Court, from filing an answer or other responsive pleading to the Master Complaint.

3. Given the status of negotiations with the Affiliated Defendants and the agreement of various entities to participate in mediation, on October 31, 2013, the Trustee and the PSC filed a joint emergency motion to extend the deadline for filing of a Master Complaint and Short Form Complaint against the Affiliated Defendants and entities participating in mediation only. [Dkt. No. 540]. The Trustee and the PSC explained that the filing of a Master Complaint at that time would be deleterious to the negotiations with the Affiliated Defendants which were then at an advanced stage. On November 4, 2013 the Court granted the motion for extension setting a new date for the filing of a Master Complaint and Short Form Complaint against the Affiliated Defendants of December 20, 2013. [Dkt. No. 542]. On November 5, 2013, the PSC filed a Master Complaint and Short Form Complaint against non-affiliated entities, as required by Case Management Order No. 7.

4. In the status conference on December 13, 2013, the Court further extended the deadline for filing of a Master Complaint and Short Form Complaint against the Affiliated

Defendants until January 8, 2014. *See* December 13, 2013, Electronic Clerk's Notes, [Dkt No. 724 at issue 7].

5. On December 23, 2013, the PSC and the Trustee announced that they had reached an agreement in principle concerning settlement with the Affiliated Defendants, and their insurers, to contribute an amount estimated to exceed \$100 million to a compensation fund to be distributed to NECC creditors, including victims who received injections of allegedly tainted steroids distributed by NECC, in satisfaction of claims against them. Although an agreement in principle has been reached, the parties are now negotiating the written terms of the settlement, a process that may take some time given the number of parties involved. The PSC and the Trustee believe that a postponement of the filing of a Master Complaint against the Affiliated Defendants is appropriate in order to provide the parties sufficient time to formalize and execute a full settlement agreement. There may be no need for a Master Complaint against the Affiliated Defendants if a formal settlement agreement can be reached. The Movants believe that an order extending the date for the filing of allegations related to Affiliated Defendants for 60 days would help facilitate resolution of the claims against those individuals and entities.

6. A delay in the filing of a Master Complaint as to the Affiliated Defendants will not prejudice any party. Affiliated Defendants are not currently required to respond to the Master Complaint and litigation against non-affiliated entities will continue unaffected by the requested extension.

7. Movants have styled this Motion as an emergency motion because of the proximity in time to the deadline for the filing of a Master Complaint and Short Form Complaint against the Affiliated Defendants.

8. Movants have filed a proposed order for the Court's consideration and convenience. The proposed order is attached hereto as Exhibit A.

Dated: January 6, 2014

Respectfully submitted,

/s/ **Thomas M. Sobol**

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*Counsel to Paul D. Moore, Chapter 11 Trustee for
New England Compounding Pharmacy, Inc.*

CERTIFICATE OF SERVICE

I, Thomas M. Sobol, hereby certify that I caused a copy of the above Joint Emergency Motion of the Chapter 11 Trustee and Plaintiffs' Steering Committee to Extend the Deadline for Filing of a Master Complaint Related to Affiliated Defendants to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: January 6, 2014

/s/ Thomas M. Sobol
Thomas M. Sobol, BBO # 471770